IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 5011 of 2007

DATED: 26.7.2007

Between:

Dr.A.V.N. Siva Kumar petitioner

And

The Government of A.P.
& 2 ors Respondents

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THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 5011 of 2007

Oral order:

This writ petition is filed seeking a direction to the respondents to de-reserve the post of Assistant Professor (ST) Veterinary Physiology in the third respondent-University in terms of G.O. Ms. No. 65 General Administration (Service-D), dated 15.02.1997, and consequently direct the respondents to consider the case of the petitioner for appointment to the said post.

The facts in brief that lead to the filing of the present writ petition are as under:

The petitioner was appointed as Veterinary Assistant Surgeon in the Animal Husbandry Department of the Government of Andhra Pradesh on 31.12.1999. Thereafter, the petitioner acquired the qualifications of Ph.D. in Veterinary Physician and also completed National Eligibility Test conducted by ICAR, New Delhi. Since 02.02.2006, he is on deputation in the third respondent-University as Assistant Professor (VP). The third respondent-University, the petitioner states, was constituted with the erstwhile Veterinary Colleges at Rajahmundry, Gannavaram and Tirupati. The petitioner initially was on deputation as Assistant Professor (VP) in the College at Gannavaram, but was later transferred to the College at Tirupati. According to the petitioner, the post of Assistant Professor (VP) in the College at Tirupati, is reserved for Scheduled Tribe, which remained unfilled for want of qualified candidates. Though the respondent-

University issued notifications to fill up the said post of Assistant Professor (VP)/ST in the years 1997, 1998 and 1999, but there was no response, and till date the said post remained unfilled and is being carried forward. The petitioner states that the Government vide G.O. Ms. No. 65, General Administration (Services-D), dated 15.02.1997, amended Rules 22 and 22-A of the A.P. State and Subordinate Service Rules, 1996 incorporating a provision for special representation/reservation, maintenance of roster, conversion of one category of post to another category of reserved post etc.

The petitioner contends that since eligible/qualified candidates in the category of ST are not available for filling up the post of Assistant Professor VP), having regard to the amendment made by the Government vide G.O. Ms. No. 65, General Administration (Services-D), dated 15.02.1997, to Rules 22 and 22-A of the A.P. State and Subordinate Service Rules, 1996, the third respondent-University, should take necessary steps to convert the said ST vacancy to Open Category. Hence, questioning the action of the third respondent-University in not taking steps to convert the ST vacancy to Open Category, and continuing the post in the reserved category despite non-availability of qualified and eligible ST candidates to fill up the same, the present writ petition is filed.

The third respondent filed counter-affidavit. It is stated that at the time of establishment of the third respondent-Sri Venkateswara Veterinary University, Tirupati, nine posts [six filled up and three unfilled – two ST (women) and one BC category] in the category of Assistant Professor (Veterinary Physiology) were transferred from Acharya N.G. Ranga Agricultural University. Hence, there is no Open Category vacancy available in the third respondent-University for being filled up. It is stated that the third respondent- University is

following the instructions issued by the Government from time to time with regard to filling up the reserved category posts. It is specifically stated that subsequent to issuance of G.O. Ms. 65, General Administration (Services-D), dated 15.02.1997, the Government issued G.O. Ms. No. 47, Social Welfare (CV.1) Department, dated 31.05.2000, which stipulates that if no eligible candidate from the reserved categories is available, the said vacancy shall be carried forward and shall not be filled up by a candidate belonging to any other community other than the community for which it is reserved. It is thus contended that the orders issued by the Government in G.O. Ms. No. 47, Social Welfare (CV.1) Department, dated 31.5.2000, being later in point of time, will prevail over the orders issued in G.O. Ms. No. 65, General Administration (Service-D), dated 15.02.1997, and as such, the relief sought for by the petitioner in the present writ petition cannot be granted.

The learned counsel for the petitioner contends that since eligible/qualified candidates in the category of ST are not available for filling up the post of Assistant Professor (VP), having regard to the amendment made by the Government vide G.O. Ms. No. 65, General Administration (Services-D), dated 15.02.1997, to Rules 22 and 22-A of the A.P. State and Subordinate Service Rules, 1996, the third respondent-University, should take necessary steps to convert the said ST vacancy to Open Category. He further submitted that though the Government in pursuance of A.P. Scheduled Castes (Rationalization of Reservations) Act, 2000, issued G.O. Ms. No. 47, S.W. (CV1) Department, dated 31.05.2000, providing for carrying forward the reserved vacancies in case qualified candidates are not found, the fact remains, the apex Court vide its judgment dated 5.11.2004 in Civil Appeal Nos. 6758 of 2000, 6934 of 2000, 7344 of 2000 and 3442 of

2001 declared the A.P. Scheduled Castes (Rationalization of Reservations) Act, 2000 as unconstitutional, and in pursuance of the said declaration, the Government issued G.O. Ms. No. 91 Social Welfare (CV1) Department, dated 23.12.2004 canceling G.O. Ms. No. 47 dated 31.5.2000, and in view of that G.O. Ms. No. 65, General Administration (Service-D), dated 15.02.1997 holds the field. He thus submitted that the third respondent-University is under an obligation to follow the procedure prescribed in G.O. Ms. No. 65, General Administration (Service-D), dated 15.02.1997, and the action of the respondents in not taking any steps in terms thereof, is illegal and arbitrary.

Heard the learned counsel for petitioner and the learned Standing Counsel for third respondent-University.

Respondent No.3-Sri Venkateswara Veterinary University, Tirupati, was created in the year 2005. Pursuant to creation of the third respondent-University, nine posts of Assistant Professor (Veterinary Physiology) – six filled up and three unfilled, of which two posts were reserved for ST (women) and one for BC, were transferred from Acharya N.G. Ranga Agricultural University. Prior to transfer of the said nine posts of Assistant Professor (Veterinary Physiology), Acharya N.G. Ranga Agricultural University, notified the posts reserved for ST (women) for appointment in the years 1997, 1998 and 1999, by way of general notifications, and thereafter, by way of limited recruitment in the years 2001, 2002, 2003, 2004, 2005, but there was no response. Subsequent to transfer of the said nine posts, third respondent-University, in the year 2006, issued the present notification for filling up the posts of Assistant Professor (Veterinary Physiology), reserved for ST (women), but it is the case of the petitioner as well as the University that nobody responded. Thus, it is clear that though the

posts reserved for ST (women) have been notified for appointment nearly nine times – eight times by Acharya N.G. Ranga Agricultural University, both by way of general recruitment and special recruitment drive, and the present by the third respondent-University, there was no response, and the same remained unfilled for want of ST (women) candidates, and are being carried forward in view of the orders issued by the Government in G.O. Ms. No. 47, Social Welfare (CV.1), dated 31.05.2000, in pursuance of A.P. Scheduled Castes (Rationalization of Reservations) Act, 2000. Clause 6 of the said G.O., which is relevant reads as under:

6. Carry forward of vacancies: - If no eligible Scheduled Caste candidate (including Woman candidate) belonging to any of the Scheduled Castes referred to in clause (a), (b), (c) and (d) of section 3 of the Act, is available, then the vacancy shall be carried forward and shall not be filled up by a candidate belonging to any other community other than the Scheduled Castes in accordance with the rules or the instructions issued by the Government in this regard.

Prior to the issuance of the above G.O., the Government issued G.O. Ms. No. 65, General Administration (Service-D), dated 15.02.1997, amending Rules 22 and 22-A of the A.P. State and Subordinate Service Rules, 1966, which provides for de-notifying the reserved vacancies if no qualified and eligible reserved candidate is available for filling up the reserved post. Clauses (g) and (h) of the said G.O., read as follows:

(g) If in any recruitment qualified candidates belonging to the Scheduled Tribes, Backward Classes (Group-A), (Group-B), (Group-C) and as the case may be (Group-D) and women are not available for appointment to any or all the vacancies reserved for them, a limited recruitment confined to candidates belonging to them shall be made immediately after the general recruitment to select and appoint qualified candidates from among the persons belonging to these communities to fill such reserved vacancies.

(h) If in any recruitment, qualified candidates belonging to Scheduled castes or scheduled tribes or Backward classes (Group-A), (Group-B), (Group-C) and as the case may be (Group-D) and women are not available for appointment to all or any of the vacancies reserved for them even after conducting a limited recruitment as specified in sub rule (g) such vacancies or vacancy may be allotted to the open competition after obtaining the permission of the Government and may thereafter, be filled by a candidate or candidates selected on the basis of Open Competition.

Though the respondents contend that in view of the orders issued by the Government in G.O. Ms. No. 47, Social Welfare (CV.1), dated 31.05.2000, they are carrying forward the unfilled reserved vacancy, the fact remains, A.P. Scheduled Castes (Rationalization of Reservation) Act, 2000, in pursuance of which G.O. Ms. No. 47, Social Welfare (CV.1), dated 31.05.2000, came to be issued by the Government, was declared unconstitutional by the Supreme Court vide orders dated 05.11.2004 passed in Civil Appeal Nos. 6758 of 2000, 6934 of 2000, 7344 of 2000 and 3442 of 2001, and in pursuance of the said declaration, the Government issued G.O. Ms. No. 91, Social Welfare (CV1) Department, dated 23.12.2004, canceling the orders issued in G.O. Ms. No. 47, Social Welfare (CV1) Department, dated 31.05.2000. In view of cancellation of G.O. Ms. No. 47, Social Welfare (CV1) Department, dated 31.05.2000, the orders issued by the Government in G.O. Ms. No. 65, General Administration (Service-D), dated 15.02.1997 holds the field, and the respondents cannot contend that since G.O. Ms. No. 47, Social Welfare (CV1) Department, dated 31.05.2000, was issued after issuance of G.O. Ms. No. 65, General Administration (Service-D), dated 15.02.1997, they are bound by the orders issued therein.

Inasmuch as G.O. Ms. No. 65, General Administration (Service-D), dated 31.05.2000, issued by the Government, which provides for de-notifying the reserved post if no qualified and eligible reserved candidate is available for filling up the said post, and having regard to the fact that in the instant case, as stated above, despite notifying the ST (women) reserved vacancy for filling up nearly nine times, since 1997 to 2005, both by way of general recruitment and by way of limited recruitment, by Acharya N.G. Ranga Agricultural University and in 2006 by the third respondent, no qualified and

eligible ST (woman) candidate is available nor is forthcoming to apply for the same, I am of the considered opinion that the third respondent-University should take steps to de-notify the said vacancy to OC category in terms of Clause (g) and (h) of G.O. Ms. No. 65, General Administration (Service-D), dated 15.02.1997, after obtaining necessary permission from the Government.

Hence, the third respondent-University is directed to follow the procedure contemplated under G.O. Ms. No. 65, General Administration (Service-D), dated 15.02.1997, and submit proposals to the Government to grant permission to de-notify the reserved vacancy of Assistant Professor (VP) as Open Category vacancy. On submitting such proposals, the first respondent-Government is directed to consider the same and pass appropriate orders in accordance with law, expeditiously.

Accordingly, the writ petition is disposed of. No costs.

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N.V.RAMANA,J

DATE: 26.7.2007
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THE HON'BLE MR JUSTICE N.V. RAMANA

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